

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company

Petition for approval of delivery services tariffs and
tariff revisions and residential delivery services
implementation plan, and for approval of certain
other amendments and additions to its rates, terms,
and conditions.

No. 01-0423

Rebuttal Testimony of
Philip R. O'Connor, Ph.D.
and Richard S. Spilky
AES NewEnergy, Inc.
On Behalf of the ARES Coalition
(Public Version)

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I.

INTRODUCTION

A. BACKGROUND AND PURPOSE OF TESTIMONY

Q. Please state your names, business affiliation and addresses.

A. My name is Philip R. O'Connor and I am Vice-President of AES NewEnergy, Inc. ("AES NewEnergy") and Illinois business leader. My name is Richard S. Spilky and I am employed by AES NewEnergy, Inc. in the position of Director of Pricing and Product Development. Both of our offices are located at 309 West Washington, Suite 1100, Chicago, Illinois 60606.

Q. Are you the same Dr. O'Connor and Mr. Spilky who submitted direct testimony in the instant proceeding?

A. Yes.

Q. On whose behalf are you providing testimony in the instant proceeding?

A. We are testifying on behalf of the ARES Coalition, which includes three major alternative retail electric suppliers ("ARES") operating in the Edison service territory, Enron Energy Services, Inc., Blackhawk Energy Services, L.L.C. and AES NewEnergy. ~~A potential residential service ARES, Dominion Retail, Inc., was a member of the Coalition until it became discouraged by the anti-competitive nature of Edison's filing and Edison's vigorous resistance in rebuttal to any suggestions for change. It decided to move on to fields that at least had some potential of being green, rather than remain in~~

24 ~~what now promises to be a desolate Illinois residential market. (See October 5, 2001~~
25 ~~letter from Dominion Retail, Inc. to the Commissioners withdrawing from this~~
26 ~~proceeding).~~

27
28 ~~Q. How does Dominion Retail's withdrawal from the instant proceeding support the~~
29 ~~very grave concerns and issues raised in your direct testimony?~~

30 ~~A. The departure of Dominion Retail underscores the point the ARES Coalition made in its~~
31 ~~direct testimony about the damage that Edison's mere filing of an anti-competitive rate~~
32 ~~case was having on the market. If the welcome mat were ever put out by Edison, as it~~
33 ~~claims, the welcome mat now has been rolled up and put away. Because of the departure~~
34 of Dominion Retail we will limit our testimony to non-residential delivery services
35 issues.

36
37 **Q. What is the position of the ARES Coalition regarding Edison's proposal as it relates**
38 **to non-residential delivery services?**

39 **A.** As explained in a legal argument recently presented to the Commission, the ARES
40 Coalition has expressed its firm belief that Edison's filing with respect to non-residential
41 rates is unlawful as it violates the provisions of the Electric Customer Choice and Rate
42 Relief Law of 1997 ("Customer Choice Act" or "Choice Act"). Once the initial delivery
43 services rates prior are set, unless the utility is experiencing financial distress, the Choice
44 Act prohibits any rate increase filings by the utility during the mandatory transition
45 period. Edison has neither claimed nor proven in its filings in this case that it is
46 experiencing financial distress. Thus, the non-residential rates are frozen until the rate
47 case that will set all post-transition rates (the "2005 Rate Case"). Further, the ARES
48 Coalition has pointed out to the Commission that Edison improperly is seeking to re-

litigate and collaterally attack a number of important decisions the Commission has made within the past two years – including the use of embedded costs, the method for calculating customer credits for unbundled delivery services and the use of a monthly rather than annual demand ratchet.

Q. What is the purpose of your rebuttal testimony?

A. Pending a decision by the Commission to dismiss the non-residential portion of this proceeding, this testimony addresses the direct testimony presented by Commission Staff and by other Intervenors and the rebuttal testimony presented by Edison.

Q. In addition to the legal arguments set forth in the ARES Coalition's filing, are there policy reasons that the Commission should not address non-residential delivery services rates in this proceeding?

A. Yes. The Commission's decision on how to handle Edison's effort to dramatically increase delivery services charges for non-residential customers is likely more important than even the crucial decisions the Commission made in 1999 that prevented anti-competitive proposals by Edison to take effect. Most important among these, of course, was the rejection of Edison's insistence on a blind lottery rather than a registration lottery. Edison's approach was intended to stunt the growth of the competitive market. Having failed to strangle the babe in the crib, Edison is back at it, trying to steamroll the growing but immature competitive market flatter than a pancake. Given the widespread understanding that there are few near-term prospects for residential competition, the Commission must recognize that this case now is really about the future of non-residential competition and the locking in of a huge rate increase for Edison's anticipated 2005 Rate Case.

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If the Commission truly wants to promote the development of competition in the non-residential retail electric market, it will dismiss that portion of the proceeding immediately and announce that, unless a utility is experiencing financial distress, no further requests for rate increases will be entertained during the mandatory transition period. **Just as we went through the litigation less than two (2) years ago focusing solely upon non-residential delivery services, this proceeding should focus only upon residential delivery services rates, terms and conditions.** Merely by introducing this proceeding to change the non-residential rates, Edison has introduced a high level of instability into what was only a nascent market. To add to this instability, despite having repeated opportunities, Edison steadfastly has refused to rule out the possibility of yet another delivery services rate proceeding prior to the end of the mandatory transition period. The Commission should not allow Edison to irreparably damage the competitive market by claiming that it has the unbridled ability to press the "restart" button on the competitive market.

If the Commission allows Edison to proceed with the non-residential portion of this proceeding, as a practical matter, the real impact will be to erode savings to customers. Edison's filing and threats of future filings force ARES to compete not only against the commodity price, but also against the risk that delivery charges will be continuously increasing. ARES either would have to price their offers to cover both commodity costs and the costs of delivery services rate increases, or ARES would have to pass the risk of such increases on to customers. In sum, Edison proposes to drive customers from the competitive market, not because competitive power prices have risen, but because it wishes to raise monopoly delivery services rates.

100 The Commission should take a step back and look at the problems inherent with Edison's
101 filing. Among other things,

- 102 • Edison has not been forthcoming about the fact that its filing is based upon an
103 atypical test year;
- 104 • Edison has not presented any customer impact analysis and has no support for
105 its assertion that its delivery services rate increase will be offset by decreases
106 in CTCs;
- 107 • Edison has misled the Commission regarding the level of transmission charges
108 that it wants to recover from delivery services customers;
- 109 • Edison merely repeats its assertions that the Commission recently rejected
110 regarding using a marginal cost methodology to calculate the meter services
111 provider ("MSP") credit and single bill option ("SBO") credit; and
- 112 • Edison makes the same assertions that the Commission already rejected
113 regarding using an annual demand ratchet rather than a monthly demand
114 ratchet.

115 The non-residential delivery services rates have been set. Edison does not claim that it
116 has suffered financially since those rates were set. The impact of reopening those rates
117 far outweighs any legitimate benefit Edison can assert. From a policy standpoint, the big
118 issue for the Commission is again whether it will stand for competition or for a
119 backsliding toward monopoly now that Edison has merged and restructured absent
120 Commission oversight. We must remember that the basic trade-off in the Customer
121 Choice Act was a free-ride on restructuring and stranded costs for Edison in return for
122 competition for customers. The Commission must ensure that Edison does not renege.

123 Q. Have you revised your customer impact analysis?

124 A. Yes. In our rebuttal testimony, we provide an updated customer impact study in reaction
125 to proposals by Staff and Intervenors with respect to revenue requirements and rate
126 design. Again, Edison has failed in its rebuttal testimony as it did in its direct testimony,
127 to provide the Commission with **any** information about the effect of its filing on non-
128 residential delivery services customers. So far, Edison's only effort in this regard has
129 been to attempt to get the Commission to believe its false assertion that its proposed rate
130 increase would be largely absorbed by offsetting reductions in the Customer Transition
131 Charge ("CTC"). As recently as yesterday, Edison witness Arlene Juracek was quoted in
132 *Crain's Chicago Business* repeating this same false assertion. (See, "ComEd seeks rate
133 hike for biz," *Crain's Chicago Business*, October 15, 2001, page 3, attached hereto and
134 made a part hereof as Appendix A.) One really has to question what Edison is trying to
135 put over on the Commission and the public. Ms. Juracek **cannot** have **any** facts to
136 support her assertion – Edison has not performed any customer impact study. (See
137 O'Connor/Spilky Direct Testimony at 58.) She is also aware of facts that directly
138 contradict her assertion – she does not take issue with the customer impact analysis that
139 we presented in our direct testimony. Edison misled the Commission regarding the fact
140 that it intended to file for an increase in transmission rates and it is trying to mislead the
141 Commission regarding the customer impact of its proposal.

142
143 Q. What are the threshold policy questions for the Commission in this proceeding?

144 A. This case, which was scheduled by the General Assembly simply as a proceeding to
145 establish initial residential delivery services rates, is being used by Edison to disrupt the
146 non-residential market, to fight as much of the battle of the 2005 Rate Case as it can out
147 of the view of the public, and to render as much as possible of that case in 2005 a *fait*

148 *accompli.* The proposals that Edison has laid on the table before the Commission and the
149 FERC would establish a nearly irrevocable decision that would result in a massive 2005
150 revenue requirements increase -- even before energy costs were considered -- on the
151 order of between **\$800 million and \$1 billion**. Reaching \$1 billion would only require
152 Edison to argue that costs had increased on the order of less than 6% annually from today
153 until the time when the rates would take effect the end of the 2005 Rate Case. Thus, the
154 Commission must decide at the outset whether it will allow Edison to inject turmoil into
155 the nascent non-residential market and lay the groundwork for a massive rate increase in
156 2005. The Commission has the opportunity to nip these problems in the bud. It should
157 take advantage of this opportunity.

158
159 **Q. How is your rebuttal testimony organized?**

160 **A.** Our rebuttal testimony will focus mainly on addressing errors or issues in Edison's
161 rebuttal testimony as they relate to six areas of concern and eight policy considerations.
162 We will propose specific recommendations to the Commission regarding necessary
163 modifications.

164
165 **B. THE ARES COALITION HAS SIX MAJOR CONCERNS**
166 **WITH EDISON'S PROPOSED RATE INCREASE OF OVER 40% THAT**
167 **WILL YIELD EDISON A 52% INCREASE IN WIRES SERVICES REVENUE**
168

169 **Q. What are the primary areas of concerns that the ARES Coalition has regarding**
170 **Edison's proposal in the instant proceeding?**

171 **A.** AES NewEnergy and our fellow certificated ARES are major providers of savings to
172 non-residential retail electric customers in Illinois. As such, we have six primary
173 concerns with Edison's filing, all of which should be shared by the Commission.

174 **First**, Edison's request for a rate increase in delivery services rates of 37% at the
175 distribution level alone, designed to yield 47.5% more in delivery services revenues, is of
176 a magnitude that would drive many customers back to bundled service. This outcome
177 would be contrary to the direction of past Commission decisions and to the objectives of
178 the Customer Choice Act. Interestingly, Edison, true to form, was not forthcoming
179 regarding the full magnitude of the extent to which it was trying at this time to increase
180 its overall wires service revenues. In the instant proceeding Edison presented to the
181 Commission estimated transmission revenue levels on a *pro forma* basis that were \$177
182 million less than the actual levels contained in Edison's recent request that was filed with
183 the Federal Energy Regulatory Commission ("FERC"). Therefore, Edison actually is
184 requesting at least an overall \$752 million wires services rate increase (a 52% revenue
185 increase), not simply the \$575 million delivery services revenue requirements rate
186 increase that Edison has sought from this Commission.

187
188 **Second**, Edison is asking the Commission to endorse a 2000 historical test year for
189 delivery services that is inflated with costs unrelated to delivery services, and costs that
190 Edison officials in other contexts have said are extraordinary or that Edison would not
191 seek to recover from ratepayers. Allowing Edison to use the 2000 test year without
192 significant modifications effectively and inappropriately would saddle both delivery
193 services customers and, ultimately, all customers with these costs.

194
195 **Third**, Edison is seeking permission to shift large expense items from the supply
196 function, to which they had been allocated prior to the sale or spin-off of the Company's
197 power plants, to delivery services. Maintaining the traditional allocation for the
198 remainder of the transition period rather than "re-functionalizing" at this time pursuant to

199 a brand new "direct assignment" scheme that has had no Commission or Staff review
200 would still permit Edison the "full recovery" to which it claims entitlement through the
201 CTC. The outcome desired by Edison effectively would irrevocably commit the
202 Commission to allowing Edison to collect expenses that have always been assigned to
203 supply – but which power plant buyers and Edison generating affiliates have seen fit not
204 to take on – from delivery services customers now, and bundled service customers in the
205 2005 Rate Case.

206
207 **Fourth, Edison's proposed changes in its rate design have targeted areas where**
208 **competition is developing and are designed to discourage competition.** Edison's
209 proposed rate design **would needlessly upset the existing savings structure which has**
210 **developed under customer choice** and would therefore drive many current delivery
211 services customers back toward bundled services. Edison's proposal is influenced by its
212 proposed *marginal cost of service methodology*. Exacerbating the problem is Edison's
213 wholly inadequate approach to voltage level discounts under its Rider HVDS proposal
214 and the adverse effects on the savings structure of its proposed annual demand ratchet.
215 Both Rider HVDS and the annual demand ratchet would cause a needless imbalance and
216 lack of comparability between bundled services and delivery services. Although it might
217 be appropriate to adjust the rates downward to those customers from whom Edison
218 admits it is overcollecting, Edison should not be allowed to abandon its current non-
219 residential rate design at this time. Edison's proposed outcome would negate much of the
220 work and investment customers, the Commission, and ARES have made in getting retail
221 electric competition off the ground in Illinois.

222 **Fifth, Edison wants the Commission to reverse itself on key pro-competitive**
223 **decisions** that the Commission has made in a string of cases since the summer of 1999

224 with respect to the methodology utilized to calculate customer credits for the purchase of
225 unbundled delivery services from providers other than Edison. This outcome would
226 introduce major uncertainties and discontinuities midstream into the transition to a
227 competitive retail electric market.

228
229 **Finally**, Edison is using this residential delivery services proceeding as a way to get the
230 Commission to **lock in an enormous rate increase now**, along with major policy
231 changes such as a commitment to a marginal cost of service study, that would almost
232 automatically flow into a major bundled services rate increase as a result of the 2005 Rate
233 Case. This outcome – which Edison has glossed over – would mean that the Commission
234 would have opened the gate to a **Trojan Horse rate increase** equivalent to those with
235 which the Commission dealt in the past to reflect new nuclear plants in rates. *Plus ça*
236 *change, plus c'est la même chose.*

237
238 **C. STAFF AND INTERVENORS LARGELY ARE IN**
239 **AGREEMENT IN THEIR OPPOSITION TO EDISON'S PROPOSAL**
240

241 **Q. Do you have any general observations regarding the Staff and Intervenor**
242 **testimony?**

243 **A.** Yes. Witnesses for the Staff and other Intervenor largely are in agreement in their
244 opposition to Edison's proposal. A review of the testimony submitted by the witnesses
245 for Staff and the other Intervenor provides the Commission with a checklist on how to
246 prevent the damage that the Edison filing seeks to inflict upon the competitive
247 marketplace for electricity in Illinois.

248 **Q. Are there some salient points that emerge from the large body of direct testimony**
249 **from Staff and the other Intervenor witnesses?**

250 A. Yes. For the most part, Staff and Intervenors are in agreement on the key issues.
251 Overall, Edison has received no support for the general thrust of its proposals. Even
252 Exelon Energy Services ("Exelon Energy"), Edison's ARES affiliate, has offered
253 testimony agreeing that the massive rate increase would damage customer choice. (See
254 Exelon Energy Ex. 1 at 3-4.) While understandably taking no position regarding the
255 appropriate revenue requirement for its affiliate (Edison), nonetheless Exelon Energy and
256 its co-witness, David Vite of the Illinois Retail Merchants Association, have proposed
257 either that Exelon's current customers be exempted from any increases resulting from this
258 case or that any increases be phased in so as not to destroy competitive choice prior to the
259 end of the transition period. (See *id.* at 5, 12-13.) The vast majority of the Staff and
260 Intervenor witnesses largely agree that the Edison proposal will seriously harm
261 customers. Accordingly, the Staff and Intervenor witnesses have provided the
262 Commission with a checklist that should allow the Commission to appropriately modify
263 the Edison filing in a manner that blunts the damage to customers, ARES, and the
264 continued development of the market that would otherwise be done.

265
266 Q. What are the key points on which the testimony of Staff and Intervenors largely
267 agree?

268 A. There are **eight** key points on which Staff and Intervenors largely agree with one another
269 and disagree with Edison and from which specific recommendations for Commission
270 action can be reasonably inferred.

271 First, it is agreed that Edison has pumped up its test year revenue requirements such
272 that the test year is not reflective of a typical year and would result in excessive revenues
273 if adopted by the Commission and that the Commission should adjust expenses to be
274 more "normal" so that the revenue requirement is not excessive to Edison's actual
275 needs.

276
277 Second, it is agreed that Edison's proposed allocation of expenses to delivery services
278 that, historically have been allocated to supply functions, must be rejected. Contrary to
279 Edison's assertions, this will not deny Edison recovery of these expenses. Instead,
280 Edison will be able to recover these costs as stranded production costs through the CTC,
281 consistent with the Customer Choice Act. The Commission should reject Edison's
282 effort to shift expenses traditionally and customarily associated with generation and
283 supply services over to delivery services, and require that full recovery of such
284 expenses continue to be collected through the CTC.

285
286 Third, it is agreed that Edison's demand for a 13.25% return on equity in a capital
287 structure is excessive and is based in great part on an incorrect contention that costs of
288 capital associated with generation and supply should be attributed to the provision of
289 delivery services. The Commission should reject Edison's proposal in favor of a
290 more modest return on equity in a capital structure that recognizes the lower risk
291 associated solely with Edison's provision of delivery services instead of the risk
292 associated with generation and supply services.

293
294 Fourth, it is agreed that there is little point in basing delivery services on Edison's
295 marginal cost study at this time. The Commission should reject Edison's request for

296 reliance on its marginal cost of service study and instead should use an embedded
297 cost of service study, consistent with the prior decisions of the Commission which set
298 non-residential delivery services rates.

299
300 **Fifth**, it is agreed that Edison's demand that the Commission reverse its own recent
301 decision on customer credits for unbundled delivery services such as metering and billing
302 would seriously impair the Commission's efforts to provide customers with the
303 innovative products and services of ARES and meter service providers ("MSPs"). **The**
304 **Commission should reject Edison's effort to re-set customer credits for unbundled**
305 **delivery services according to a previously rejected theory so soon after the initial**
306 **setting of these rates by the Commission.**

307
308 **Sixth**, with the exception of one Intervenor that is an individual customer (DOE), it is
309 agreed that Edison's proposed High Voltage Delivery Services Rider ("Rider HVDS") is,
310 at best, a half measure to reflect cost differences by voltage levels that would be more
311 disruptive to the overall design of rates than any benefit it produces. **The Commission**
312 **should reject the HVDS proposal and direct Edison to prepare a full set of rates**
313 **based upon voltage levels that would apply across all customer classes as required in**
314 **the Customer Choice Act. Otherwise, approval of Edison's Rider HVDS proposal**
315 **will allow Edison to lock in this proposal not only for delivery services customers**
316 **but also for bundled service customers prior to the 2005 general rate case.**

317
318 **Seventh**, it is agreed that if the Commission were to approve an increase in delivery
319 services revenue requirements, that increase should be dramatically less than Edison's
320 proposal which would increase Edison's revenue by more than 47.5% revenue and would

321 produce by a 36.7% rate increase. At a minimum, the Commission should reduce
322 Edison's proposed \$575 million revenue requirements increase by roughly \$400
323 million in the aggregate prior to considering disallowance's that might result from:
324 (1) an audit of capital projects as suggested by a number of Intervenor; and (2)
325 imputation of an appropriate capital structure and cost of capital.
326

327 Eighth, it is agreed by most Intervenor that the Commission should audit the costs of
328 Edison's proposed distribution capital projects. This proposal is made in light of
329 Edison's acknowledgement of the past mismanagement of its delivery system that has
330 required substantial remedial investment and expense. This past mismanagement was
331 well recognized by John Rowe, now co-CEO and President of Exelon Corp., Edison's
332 sole common equity shareholder. For example, at an August 12, 1999 press conference,
333 Mr. Rowe who was CEO of Edison, was asked by a reporter the following question:

334 "As you undertake this effort, will this cost ratepayers any more money?"

335 Mr. Rowe responded:

336 "This will not cost ratepayers anymore money because we have fixed rates.
337 This is our problem. We'll fix it ourselves."
338

339 (Edison Response to ARES Coalition Data Request Item 3.05.) (Emphasis added.) In
340 the same press conference Mr. Rowe later stated:

341 "You think I'm not taking a hit here? And yes, my shareholders will take a hit. It
342 will cost money to do this extra maintenance. It will cost millions of dollars. It
343 will cost tens of millions and, in due course, hundreds of millions to do what this
344 infrastructure is (sic) required. It will be done."¹
345

346 Edison's claim that it is seeking to recover only reasonably and prudently incurred costs
347 must be fully investigated through an investigation and audit, especially in light of its

¹ Transcript of August 12, 1999 John Rowe press conference page AC 0000258, Edison response to ARES Coalition data request 3.01.

348 past admissions of unreasonableness and imprudence. Further, because Edison has
349 sought to withhold or to delay the release of information for use in this proceeding,
350 Intervenor's are in broad agreement with the need for an investigation and audit. An
351 investigation and audit could help the Commission sort out the costs that Mr. Rowe
352 guaranteed that ratepayers would not be required to incur. **The Commission should**
353 **conduct an investigation and audit of the prudence of Edison's distribution capital**
354 **projects and distribution reliability expenditures.**

355
356 **D. STAFF AND INTERVENORS LARGELY AGREE THAT**
357 **EDISON'S PROPOSAL VIOLATES SEVEN KEY POLICY CONSIDERATIONS**
358

359 **Q. Do these eight key points on which Staff and Intervenor's largely agree support your**
360 **contention in your direct testimony that Edison's filing violates the seven (7) key**
361 **policy considerations that you mentioned in your direct testimony?**

362 **A. Yes. The totality of the direct and rebuttal testimony by Edison, Staff and Intervenor's**
363 **underscores the contention in our direct testimony that Edison's filing violates seven (7)**
364 **key policy considerations.**

365
366 **Q. Please explain.**

367 **A. The testimony of Edison, Staff and Intervenor's has reinforced the contention that Edison**
368 **is violating the following seven policy considerations:**

- 369 (1) **The Commission is required by law to act to promote the development of**
370 **competition.** *Edison denies that the language in the pre-amble to the Customer*
371 *Choice Act directing the Commission to promote competition has any controlling*
372 *meaning. (See Edison Ex. 18.0 at 5.) However, in its recent Response to the Joint*
373 *Motion to Strike by the ARES Coalition, Edison relies heavily for its rationale on*
374 *the language found in the legislative findings and preamble to the Customer*
375 *Choice Act.² (See Edison Response at 18);*
376
377 (2) **The Commission must ensure that delivery services customers pay only for**
378 **those costs directly or indirectly related to providing necessary delivery**
379 **services.** *Edison's filing seeks to impose on delivery services customers the cost*
380 *of capital related to supply price risks that have nothing to do with the delivery of*
381 *power and energy and expenses that have always previously been allocated to*
382 *supply functions prior to Edison's sale or spin-off of its generation. Edison also*
383 *seeks to reallocate their supply costs to delivery services and to include other*
384 *items unrelated to delivery services;*
385
386 (3) **The Commission should prevent the Edison DST filing from serving as a**
387 **"Trojan Horse" for a substantial general rate increase in 2005 for bundled**
388 **service customers.** *Even in the face of requests from customers, governmental*
389 *parties and participants in the market, Edison maintains that the Commission*
390 *should not investigate and audit the massive new costs it effectively seeks to*
391 *include in bundled service rates;*
392
393 (4) **The Commission should maintain the integrity of the Commission's Test**
394 **Year rule so as to avoid the possible misrepresentation of an atypically**
395 **expensive year as a year of normal expenditures and investment.** *Edison*
396 *denies in its testimony that any test year expenses are out of the ordinary in spite*
397 *of senior management statements during the test year itself that the expenses were*
398 *both large, extraordinary, and unusual in order to make up for past neglect of the*
399 *distribution system by the Company;*
400
401 (5) **The Commission should identify the proper capital structure and cost of**
402 **capital to operate the separate regulated functions of Edison.** *Edison still*
403 *advocates a capital structure and cost of capital for delivery services alone that*
404 *would more properly apply to bundled services that include generation and*
405 *supply obligations;*
406
407 (6) **The Commission should identify and manage the relationship between the**
408 **DST filing and the operation of Edison's PPO Market Value Index ("MVI")**
409 **tariffs.** *Edison still refuses to accept the need for changes in the MVI to account*
410 *for optionality, both for known and unknown customers, even though Edison*
411 *claims in this case that it faces supply price risk associated with serving*
412 *unanticipated load; and*

² Edison president Pam Strobel, in her Rebuttal testimony at page 5 calls on the Commission not to "ignore the fact that legislative findings are not the part of the Act that controls how the Commission decides cases." Yet, Ms. Strobel's attorneys, on her behalf, tell the Commission at pages 15-16 and 18 of the Response to the ARES Coalition to Strike that the Commission must place reliance on the very same section of the Act, 16-101A(a) that Ms. Strobel says deserves no weight, as a reason to dismiss the Motion Strike of the ARES Coalition.

413 (7) The Commission should maintain its commitment to the principles of rate
414 continuity, avoidance of rate shock, and the prevention of unfair
415 discrimination among customer classes. Edison, while failing to provide any
416 customer impact study to the Commission, proposes a massive increase in
417 revenue requirements, now found to be on the order of over \$750 million, or at
418 least a 40% increase in rates and a 53% increase in revenue, that would fall on
419 delivery services customers in 2002 and on all customers in the 2005 Rate Case.
420 This proposed rate increase is fueled by such items as "refunctionalized"
421 expenses and costs of capital previously associated with supply, as well as
422 dramatic changes in rates design.
423

424 Q. Is there a general tone or tenor of the Staff, Intervenor and Edison testimony that
425 comes across?

426 A. Yes. As a general matter, while the Staff and Intervenor testimony is often vigorous and
427 pointed, it is at least respectful of the Commission's intelligence. Much of the Edison
428 testimony, however, tends toward the liberal use of words such as "nonsense," "absurd,"
429 "ridiculous" and "astonishing" to characterize the testimony of Staff and Intervenors.
430 Too often, Edison has chosen to respond with flamboyance rather than substance. This
431 sort of disrespectful attitude in the past has often worked against Edison's ultimate
432 interests and the interests of its customers. Interestingly enough, these adjectives are
433 never directed toward describing Edison's requests to increase wires service revenues by
434 52%.

435
436 Q. Are there any basic errors in the Edison rebuttal testimony with respect to
437 regulatory standards for the consideration of costs for reflection in rates?

438 A. Yes. There are two fundamental errors about the regulatory standards for considering
439 costs for inclusion in rates. First, Edison improperly suggests that the burden of proof is
440 mainly on Intervenors and Staff. Second, Edison improperly suggests that the
441 Commission is obliged to accept the cost of capital of the entire firm rather than the cost

442 of capital of the delivery services function in setting the allowable return on equity and
443 the cost of debt for delivery services.

444
445 1. Edison's Error Regarding The Appropriate Burden of Proof

446 Q. Please address Edison's effort to shift the burden of proof from the Company to
447 others.

448 A. This error is promoted in the rebuttal and supplemental rebuttal testimony of Edison
449 witnesses Gordon and Hill, among others. (See eg. Ex. 21.0 at 5; Ex. 38.0 at 8.) Despite
450 Edison's public contrition to the contrary, these witnesses contend that Staff and
451 Intervenors have not proven imprudence by Edison in spending associated with belatedly
452 bringing the delivery system up to normal United States standards of utility reliability
453 performance; these witnesses claim that the assertions of Edison regarding the prudence
454 and reasonableness of such expenditures should be accepted without question by the
455 Commission. However, Staff and Intervenors need not prove any such thing. The
456 problem with Edison's contention is that the Illinois Public Utilities Act (the "Act")
457 places the burden of proof on the utility. (See 220 ILCS 5/9-201(c).) (See also *Citizens*
458 *Utility Bd. v. Illinois Commerce Comm'n*, 276 Ill. App. 3d 730 (1995), *app. denied* 165
459 Ill. 2d 548.) All that Staff and Intervenors "must do" is bring to light inconsistencies,
460 gaps, errors, contradictions, and evidence including past statements of Edison officers
461 that cast serious doubt on the Company's credibility and motives. Edison has the burden
462 of proving prudence; Staff and Intervenor witnesses appropriately highlight Edison's
463 failure to do so. In fact, the *Citizen Utilities Bd.* case was remanded to the Commission
464 because the Commission erroneously accepted Edison's assertion that prudence was
465 assumed and that intervenors had to prove otherwise.

466 Q. What is Edison's basic error regarding its assertions regarding the appropriate
467 burden of proof in the instant proceeding?

468 A. It is not sufficient for Edison to assert that it spent a sum of money on expenses during
469 the test year. As even Edison witness Juracek eventually admits, Edison must
470 demonstrate that the expenses were prudently incurred. (See Edison Ex. 20.0 at 37.) By
471 virtue of the many public statements by Edison officials about both the need to play
472 catch-up on the delivery system due to past mismanagement and pledges that customers
473 would not be asked to pay for this neglect, Edison has created a heavier burden than
474 might otherwise be the case with respect to Edison's responsibility to prove its case.
475 Contrary to Edison's assertions, customers do not benefit by utilities delaying necessary
476 expenses and then responding in a near panic, both actions that Edison has taken. There
477 are numerous expense items that Edison has either failed to prove should be included in
478 the test year or failed to show the relationship of the cost item to its provision of delivery
479 services.

480
481 Q. Can you please provide an example of how Edison attempts to "turn the tables"
482 regarding the burden of proof in the instant proceeding?

483 A. A good example of Edison's effort to turn the tables regarding the burden of proof is to
484 be found in the supplemental rebuttal testimony of Edison witness Hill. At page 8 of
485 Edison witness Hill's supplemental rebuttal testimony, he complains that Staff witness
486 Sant is "now seeking to shift the burden of proof to the Company to prove in the first
487 instance that its test year data is representative (or is unrepresentative) of its costs going
488 forward." However, as Mr. Hill notes several times in his testimony, the historical test
489 year is merely a starting point, after which adjustments should be made. We agree with
490 that. But, in his complaint about the shifting of the burden, Mr. Hill is ignoring the

overarching and controlling responsibility set forth in the Act with respect to the Company's burden of proof. Mr. Hill also attacks a strawman, suggesting that the issue being raised by Staff and Intervenors is that of the selection of the 2000 historical test year in the first place. No one is saying that Edison was not allowed to select a 2000 test year. Our objection is that the 2000 test year is atypical and, accordingly, should undergo substantial revisions to reflect that fact.

Q. Why is Edison witness Hill incorrect in his assertion regarding the position of Staff and Intervenors?

A. What is being said by Staff and Intervenor witnesses is that in selecting the 2000 test year, Edison has chosen to include numerous impermissible items, resulting in efforts to recover in delivery services rates, costs that largely are unrelated to delivery services or which were costs that were not prudently incurred.

2. Edison's Error Regarding The Appropriate Cost of Capital

Q. Please address the assertion by Edison's rebuttal witnesses that the firm's overall cost of capital should be controlling as the Commission decides the allowable returns.

A. The error with respect to the standards for the reflection of the cost of capital is promoted by Edison witnesses Thone and Peltzman. They contend that the Commission, in setting the return on equity for delivery services must consider the cost of equity for Edison's entire firm and all of its activities and businesses. (See Edison Ex. 29.0 at 4; Ex. 30.0 at 4.) They further deny that the Commission is in any position to consider whether the firm's overall cost of debt should be adjusted to reflect a different cost that would be

imputed to the delivery services function exclusively. Both points are fundamentally wrong.

Q. Why would it be improper for the Commission to set the return on equity based upon how the financial market views Edison's entire company?

A. The Customer Choice Act is clear in providing for inclusion in delivery services rates only those costs related to delivery services, including costs of capital. (See 220 ILCS 5/16-108.) To the extent that Edison has higher risk functions or businesses that are not delivery services, those functions will need to be priced in ways that reflect their contribution to the firm's overall riskiness.

Q. Please provide an example to illustrate why it would be improper to base the return on equity upon the market's view of Edison's entire company.

A. Recently, Exelon Corp., Edison's parent firm, announced reduced earnings guidance and cited difficulties in a number of unregulated activities carried out in non-utility subsidiaries of Exelon. This announcement included reduced earnings related to power marketing, Exelon Enterprises and its investment in a manufacturer of telecommunications equipment. Presumably, no one would even consider attempting to convince the Commission that the cost of capital of an investment in a telecommunications affiliate's activities should be reflected in Edison's delivery services rates. Further, the Commission would not tolerate the inclusion of increased equity or debt costs even if the telecommunications activities were being carried out in a non-utility subsidiary of Edison or even inside the utility itself. Yet, Edison's witnesses are seeking to include in delivery services rates the cost of capital associated with provider of last resort ("POLR") functions that fall well outside the definition of delivery services.

540 Q. Can you provide another example of activities that the utility could undertake itself
541 that should not impact the Commission's calculation of the Company's cost of
542 capital in this delivery services proceeding?

543 A. Certainly. Under the Customer Choice Act, utilities are allowed to compete inside the
544 service territories of other Illinois utilities without Commission oversight. This type of
545 foray into the competitive market obviously is fraught with risks. It is just as obvious
546 that the risks associated with those operations would have nothing to do with "delivery
547 services" provided by the utility in its own service area. Just as it would be improper for
548 the Commission to allow those types of "non-delivery services" activities to impact
549 Edison's delivery services rate of return, the Commission should not allow Edison's
550 "non-delivery services" POLR obligations to impact Edison's delivery services rate of
551 return.

552
553 Q. Does the Customer Choice Act provide additional guidance on this issue?

554 A. Yes. The Customer Choice Act excludes generation and supply services from the
555 definition of delivery services, leaving it in the realm of a separate supply service –
556 Edison selling the Power Purchase Option ("PPO") or retailing as a retail electric supplier
557 ("RES") – or as part of bundled service. The Customer Choice Act defines delivery
558 services as follows:

559 "those services provided by the electric utility that are necessary in order for
560 the transmission and distribution systems to function so that retail customers
561 located in the electric utility's service area can receive electric power and
562 energy from suppliers other than the electric utility and shall include, without
563 limitation, standard metering and billing services."
564

565 (220 ILCS 5/16-102.) It is notable that the Customer Choice Act specifically
566 distinguishes power and energy from the definition of delivery services. The Customer
567 Choice Act further provides that:

568 "Charges for delivery services shall be cost based, and shall allow the electric
569 utility to recover the costs of providing delivery services through its charges to
570 its delivery services customers that use the facilities and services associated
571 with such costs. Such costs shall include the costs of owning, operating and
572 maintaining transmission and distribution facilities."
573

574 (220 ILCS 5/16-108.) Costs, including capital costs caused by or associated with supply
575 are certainly meant to be excluded from the cost of delivery services. Edison's provision
576 of delivery services is legally separate from its provision of bundled service or supply
577 service, both of which have their own opportunity for rate setting through the
578 Commission or in the market.
579

580 **Q. Please address Professor Peltzman's contention that the Commission must impute to**
581 **delivery services the cost of equity of the entire firm.**

582 **A.** At page 3 of Edison witness Professor Peltzman's rebuttal testimony admits that he did
583 not "analyze particular ComEd tariffs" but that he "understands" that "ComEd does not
584 have the authority to pass through to retail customers *all* of the costs and losses that may
585 arise from its obligations as the provider of last resort." (Emphasis added.) Professor
586 Peltzman goes on to state that:

587 "Each business must now earn enough to cover all of its costs, including
588 capital costs, if it is to retain capital in the long run. The 'distribution
589 business' cost of capital is one that reflects all of the risks associated with
590 that one business, including those imposed by the provider of last resort
591 obligations."
592

593 (Edison Ex. 29.0 at 3.)
594

595 **Q. Do you agree with Professor Peltzman's assertions?**

596 **A.** No. There are two problems with Professor Peltzman's position. **First**, Professor
597 Peltzman does not address the extent to which Edison's financial exposure with respect to
598 POLR services is limited by the provisions of the Customer Choice Act. Professor

599 Peltzman raises a couple of questions: Is he assuming that the market sees this risk as
600 totally open ended or is it quantifiable? Is there assumed to be any limit at all to the
601 volatility in Edison's cash flows? To the extent that the risk of fluctuations in cash flow
602 is quantifiable by the market, that quantification is fundamentally affected by Edison's
603 ability to limit its exposure through the Customer Choice Act.

604
605 **Second**, Professor Peltzman's contention at page 4 of his rebuttal testimony regarding the
606 pass through of the costs of all risks of the firm to ratepayers is incorrect. It is long
607 standing regulatory practice for the Commission to take steps to insulate ratepayers from
608 the cost of bad decisions by management or from the costs associated with services,
609 businesses or functions unrelated to the service that they receive. Indeed, the General
610 Assembly has gone to great lengths to make the point that delivery services rates should
611 be set based upon only those specific functions that are enumerated in the Customer
612 Choice Act. (*See* 220 ILCS 5/16-108.)

613
614 **Q. Please address the rebuttal Testimony of Edison witness Ebright with respect to cost**
615 **of capital issues.**

616 **A.** Edison witness Ebright manages to include both of the fundamental errors about
617 regulatory standards – burden of proof and appropriate cost of capital – in his rebuttal
618 testimony. (*See* Edison Ex. 28.0 at 9.) He attempts to shift the burden of proof to parties
619 other than Edison with respect to proving that the firm's cost of debt is or is not the same
620 cost of debt that should be imputed to the delivery services function. Edison witness
621 Ebright states that "Dr. O'Connor and Mr. Spilky have not established that there is a
622 difference in the cost of debt ComEd incurred for generation projects and the cost of debt

623 for Transmission and Distribution projects or that long-term debt is earmarked for one or
624 the other.”

625
626 **Q. How do you respond to Edison witness Ebright?**

627 A. Again, Edison’s witness misses the point of our testimony. Of course we did not
628 establish such a fact because it is not our burden and, more importantly, that is not what
629 we set out to do.

630
631 **First**, it has been Edison’s witnesses, including Peltzman, Thone, and Culp who first
632 raised the matter of the adverse impact on Edison’s cost of equity of the “restructuring”
633 of the business, meaning the separation of generation from wires. (See Edison Ex. 8.0 at
634 5-6; Edison Ex. 9.0 at 8-10; Edison 10.0 at 9-10.) We only have pointed out in response
635 that, to the extent Edison has been wounded, the wound is self-inflicted and that the
636 Commission is not obliged to compensate Edison for such decisions. There are risks to
637 be borne by Edison in return for the many benefits conferred on the Company by the
638 Customer Choice Act.

639
640 **Second**, Mr. Ebright mischaracterizes and misses the point with respect to our direct
641 testimony. In our direct testimony at page 52, we stated that “While much of the invested
642 capital in Edison relates to delivery services, to the extent that debt costs are higher due
643 to supply obligations, those additional debt costs should be allocated for recovery through
644 supply charges.” We have merely stated the obvious: that the irrefutable presumption is
645 that if equity costs are higher due to cash flow volatility caused by supply obligations,
646 then it is reasonable to expect that debt costs would be similarly affected since both
647 equity and debt costs are affected by volatility of cash flow. However, it is Edison’s

burden to prove its point which, apparently, is that while equity costs are higher due to supply obligations, debt cost are not affected and that in any event capital costs associated with supply obligations, for whatever reasons incurred, must be assessed against delivery services customers. It is Edison's burden to rebut the presumption it has created and to demonstrate that the forces it claims affect equity costs of the firm do not affect debt costs. Once having done that, one way or the other, and notwithstanding the Customer Choice Act, Edison must then somehow support its claim that capital costs affected by supply obligations are to be charged to delivery services customers. Edison has not even attempted to meet that burden yet, and it is too late in the proceeding for Edison to present such evidence now.

II.

DISCUSSION OF THE KEY POINTS UPON WHICH STAFF AND INTERVENORS LARGELY AGREE

Q. At pages 10-13 of your rebuttal testimony, you mentioned eight (8) key points upon which Staff and Intervenor largely agree. Which of those eight key points are you going to specifically address in this section of your testimony?

A. In this section of our rebuttal testimony, we will address the following six (6) key points upon which Staff and Intervenor largely agree:

- (1) Edison's proposed increase is of a magnitude that would drive many competitive choice customers back to bundled service;**
- (2) Edison has proposed an inflated test year that includes atypical costs and costs unrelated to delivery services;**
- (3) Edison seeks to shift expenses from generation to delivery services in the wake of the sale and spin-off of its power plants;**

- 673 (4) Edison's proposed rate design and marginal cost of service methodology
674 needlessly and harmfully would create differences between the basis for delivery
675 services and bundled services;
- 676 (5) Edison proposes to reverse past pro-competitive decisions by the Commission
677 with respect to customer credits for unbundled delivery services; and
- 678 (6) Edison is using the residential delivery services proceeding to lock in a massive
679 rate increase for bundled service in 2005 that is the size of an addition of a new
680 nuclear power plant.
681

682 Q. Do you address the other two (2) key points in your testimony.

683 A. Yes. Throughout our testimony, we address the other two key points. First, at pages 10
684 to 14 of our rebuttal testimony, we discuss the agreement between Staff and other
685 Intervenor that **the Commission should audit the costs of Edison's proposed**
686 **distribution capital projects and distribution O&M expenditures** to determine what
687 costs should be borne by Edison's shareholders rather than its ratepayers. As discussed at
688 page 13 above, because Edison has sought to withhold or to delay the release of
689 information for use in this proceeding, Intervenor are in broad agreement with the need
690 for an investigation and audit. **Second**, at pages 17 to 22 of our rebuttal testimony we
691 discuss the appropriateness of Edison's provided capital structure and recommend that
692 the Commission should endorse a more modest return on equity in a capital structure that
693 recognizes the lower risk associated solely with Edison's provision of delivery services.

694 A. **EDISON'S PROPOSED INCREASE**
695 **IS OF A MAGNITUDE THAT WOULD DRIVE MANY**
696 **COMPETITIVE CHOICE CUSTOMERS BACK TO BUNDLED SERVICE**
697
698

1. **Discussion of Edison's Proposed Rate Increase**

699 Q. A number of parties, including Edison, have used the figure of a 36.7% rate increase
700 yielding a 47.5% or \$575 million revenue requirements increase in characterizing
701 the magnitude of the rate case filed by Edison. Is that figure accurate?

702 A. Apparently, not anymore. We all thought the number was reasonably accurate since
703 Edison had included an estimate in its filing that there would be very little increase in any
704 of Edison's transmission and ancillary services charges. In any event, it would have been
705 hard to imagine that Edison would seek even more money from delivery services
706 customers after just two years of competition than the 36.7% rate increase in local
707 distribution charges. However, due to a FERC request by Edison for a **78.4% increase**
708 **in combined transmission and ancillary services revenues** (including a 102% increase
709 in transmission revenues alone) the actual increase in delivery services revenues is on the
710 order of **\$752 million** or about a **52.3%** overall increase in wires revenues from
711 transmission, ancillary service and distribution combined. This suggests an overall wires
712 rate increase of something over 40%. (See Edison Response to ARES Coalition Data
713 Request, Item 8.1.)
714

715 Consistent with the way in which it has not been forthcoming in this proceeding, Edison
716 did not address this issue in its rebuttal testimony, even though it had all of the
717 information available to do so. Edison's original claim of **\$169.8 million** in transmission
718 revenues and **\$55.7 million** in ancillary services revenue in its filing with the Illinois
719 Commission turns out to have been just one more head fake. The truth is that Edison is
720 asking FERC to approve transmission and ancillary services components of **\$342.2**

721 million in transmission revenues and \$60.0 million for ancillary services. This is a total
722 of \$176.7 million more than Edison originally advised the Commission it was seeking.
723 In June, Edison asserted that transmission rates would stay the same or be lower; by
724 August, Edison "found" a \$176.7 million rate increase that it now wants pass along to
725 customers. Again, these are dollars that Edison will seek to lock in and flow through on
726 an automatic basis to bundled service customers after 2005. Interestingly, Edison is now
727 seeking an overall increase in wires revenues greater than the \$750 million approved in
728 the highly controversial 1991 decision of the Commission (Docket No. 90-0169).
729

730 Q. Is it your understanding that the Commission is aware of Edison's proposal to
731 increase transmission rates?

732 A. Yes. Thankfully, the Commission has intervened at FERC in opposition to this large rate
733 increase. Among the reasons cited by the Commission for opposition to Edison's
734 transmission rate increase is Edison's apparent attempt to pump up its revenues by
735 utilizing gross-levelized ratemaking rather than the depreciated non-levelized ratemaking
736 currently in use. In its filing with FERC, the Commission states that approval by FERC
737 of Edison's request "would result in artificially high transmission rates, and an unjust and
738 unreasonable windfall to ComEd at the expense of transmission ratepayers." (See
739 *Commonwealth Edison Company, Commonwealth Edison Company of Indiana*, Docket
740 ER01-2992-000, Commission Comments at 3, October 2, 2001.) The Commission
741 estimates the windfall to be in the area of \$665 million. (See *id.* at 7.) Edison's apparent
742 justification for ignoring past depreciation expenses already collected from customers is
743 that transmission service within the Alliance Regional Transmission Organization
744 ("ARTO") is a "new" service. Thus, Edison seeks to more than double transmission
745 revenues in large part through another "accounting change" and the Orwellian

746 characterization as "new" that which is old. (*See id.* at 3.) In *Crain's*, Edison witness
747 Naumann makes it clear that Edison is willing to push the limits of the law to further
748 enrich its shareholders:

749 "ComEd believes we have an obligation to the shareholders of
750 (parent company) Exelon Corp. to receive compensation in
751 accordance with what is permissible by law," says Steven T.
752 Naumann, ComEd vice-president in charge of transmission
753 services. "The [Federal Energy Regulatory] commission will
754 determine if this is what they meant (in their order) or if it is not
755 what they meant."
756

757 (Appendix A, p. 2.) It is apparent that it is left to this Commission to vigilantly guard
758 against Edison's overreaching.

759
760 **Q. Have you taken the impact of Edison's proposal for a large increase in transmission**
761 **and ancillary service revenues into account in an updated customer impact**
762 **analysis?**

763 **A.** Yes. In this rebuttal testimony, we provide an update to the customer impact testimony
764 study we provided in our direct testimony. The updates that we provide make use of the
765 new information that Edison has now provided in response to the ARES Coalition's data
766 requests. (*See Edison Response to ARES Coalition Data Request, Item 8.1.*)

767
768 **Q. What are the results of the new customer impact study that you conducted?**

769 **A.** Understandably, this new information further bolsters the conclusion that approval of
770 Edison's rate increase improperly would result in rate shock. The results of our customer
771 impact study show even more customers would be driven back toward bundled
772 service if Edison's proposals in the instant proceeding are approved. Significantly,
773 Edison has yet to provide the Commission with any customer impact information. The
774 only response that Edison can muster, which already has been demonstrated to be false, is

775 that CTCs largely would absorb the impact of the proposed rate increase. In addition to
776 considering the impact of the proposed increase in transmission rates on customers, we
777 have updated our customer impact study to take account of key recommendations with
778 respect to rate design and revenue requirements contained in Staff and Intervenor
779 testimony.

780
781 **2. AES NewEnergy's Customer Impact Analysis**

782 **Q. What is the purpose of the additional customer impact analysis contained in this**
783 **rebuttal testimony?**

784 **A.** Since we performed the customer impact analysis that was included in our direct
785 testimony, three new pieces of information have come to light. **First**, On August 31,
786 2001, Edison made a new Transmission Rate filing before the FERC in Docket #ER01-
787 2992, which identifies, among many other things, Edison's proposed transmission and
788 ancillary services revenue requirements. **Second**, the direct testimony of David Effron,
789 on behalf of the governmental and consumer ("GCI") intervenors recommends a
790 significantly lower revenue requirement for Edison. While Mr. Effron's final
791 recommendation may differ somewhat, for purposes of this customer impact analysis,
792 AES NewEnergy has assumed that GCI witness Effron will propose a \$169 million
793 increase in Edison's revenue requirement. **Third**, Staff and most other intervenors have
794 recommended rejection of the proposed Rider HVDS, the marginal cost based rate
795 design, and the 12-month demand ratchet.

796 Q. Is the updated customer impact study comparable to the original customer impact
797 study that you supplied in your direct testimony?

798 A. Yes. In our rebuttal testimony, we have included an analysis of the impact of these three
799 additional pieces of information on the same representative sample of customer accounts
800 as we used in our direct testimony. A description of the specific methodology that was
801 used to incorporate these additional pieces of information in our customer impact analysis
802 is attached hereto and made a part hereof as Appendix B.

803

804 Q. Have you prepared a summary table, highlighting the impact of these three new
805 pieces of information?

806 A. Yes. Table 1 in Appendix C illustrates the various revenue effects of these proposals on
807 a case-by-case basis and the differences between these proposals in relation to the current
808 revenue requirement levels for transmission and distribution. (For the Commission's
809 convenience, Tables 1-4, including Case #'s 1-3, are attached hereto and made a part
810 hereof as Appendix C.)

811

812 Q. Please describe the significance and impact of Edison's transmission filing with
813 FERC on the instant proceeding.

814 A. In our direct testimony at pages 14 to 16 and in Appendix 1 at page vi, we expressed
815 concern regarding Edison's use of a 0.230¢ per kWh transmission costs in the direct
816 testimony of Edison witnesses Alongi/Kelly as the proper transmission rate to utilize in
817 analyzing the rate impact of Edison's proposal in the instant proceeding. We noted that
818 Edison had led the Commission and other parties to believe that transmission rates would
819 remain at their current levels or be reduced. (See Edison Ex. 13.0, Attachment E at page
820 2.) The customer impact study presented in our direct testimony used Edison's proposed

transmission cost figure and also made a comparable analysis presuming that transmission costs would at least remain level, rather than decline as is presumed by Edison's figure of 0.230¢ per kWh.

Table 3 in our direct testimony illustrated the current transmission charges compared to the 0.230¢ per kWh used in Edison witnesses Alongi/Kelly's direct testimony. We have updated that analysis and have included in our rebuttal testimony the following Table 2 which includes a comparison of transmission costs between (1) present levels; (2) those proposed by Edison in the instant proceeding; and (3) those estimated levels based on Edison's proposal that is pending before the FERC.

<u>Table 2: Transmission Cost Comparison</u>						
RCDS Class #	Current PPO Transmission Charges	Transmission Charges Used by ComEd in this Proceeding	Difference from current PPO Transmission Charges	Estimated Transmission Charges based on recent FERC Filing*	Difference from current PPO Transmission Charges	
1	0.289	0.230	0.059	0.409	0.120	¢/kWh
2	0.344	0.230	0.114	0.409	0.065	¢/kWh
3	0.343	0.230	0.113	0.409	0.066	¢/kWh
4	0.320	0.230	0.090	0.409	0.089	¢/kWh
5	0.295	0.230	0.065	0.409	0.114	¢/kWh
6	0.292	0.230	0.062	0.409	0.117	¢/kWh
7	0.272	0.230	0.042	0.409	0.137	¢/kWh
8	0.267	0.230	0.037	0.409	0.142	¢/kWh
9	0.260	0.230	0.030	0.409	0.149	¢/kWh
10	0.228	0.230	(0.002)	0.409	0.181	¢/kWh

*: see appendix of Rebuttal Testimony for derivation

833 Q. Please summarize the results of your analysis regarding the impact of Edison's
834 proposed transmission rate increase.

835 A. Based upon our analysis of Edison's FERC filing, we believe that the transmission rate
836 increase sought by Edison amounts to be 0.409¢ per kWh. For a further discussion
837 regarding this analysis, please see Appendix B. Obviously, Edison's suggested use of a
838 0.230¢ per kWh transmission rate is misleading and **significantly understates** the
839 expected level of transmission costs that Edison is seeking to recover.

840

841 Q. Why should the Commission be concerned about transmission rates in the context
842 of this delivery services rate proceeding?

843 A. As the Commission is aware, increasing transmission or distribution rates for delivery
844 services customers during the mandatory transition period makes it more difficult for
845 customers to realize savings compared to their bundled service rates. The customer
846 impact analysis being presented here by the ARES Coalition supports and validates the
847 Commission's concerns before FERC that "any increase in the unbundled transmission
848 rate will serve as a disincentive for retail customers to switch to unbundled service." (See
849 Commission Comments at 8, Docket No. ER01-2992, October 2, 2001.)

850

851 The impact of these proposed transmission rate increases alone would result in rate shock
852 for customers. When combined with Edison's proposed delivery services rate increase,
853 the rate shock is even more dramatic. It is no wonder Edison chose not to advise the
854 Commission of its plans to concurrently seek a significant increase in transmission
855 revenues.

856 Q. What additional customer impact analysis has been added in this rebuttal
857 testimony?

858 A. We have provided **three** additional customer impact analyses based upon the Staff and
859 Intervenor direct testimony and Edison's FERC filing. The **first** new model run
860 presented here (referred to as Case #1) utilizes the full distribution revenue requirement
861 sought by Edison but using the rate structure currently in place (*i.e.* embedded cost, non-
862 ratchet and non-HVDS distribution rate design). Case #1 also uses transmission cost
863 levels based upon Edison's FERC filing. Thus, Case #1 reflects the actual revenue
864 requirements requested by Edison but illustrates how those costs would be assessed to
865 customers under the existing rate design.

866
867 The **second** new model run (referred to as Case #2) utilizes the same embedded cost,
868 non-ratchet and non-HVDS distribution rate designs as currently in place, with revenue
869 levels based on the distribution revenue requirement derived by GCI witness David
870 Effron. This model assumes that Edison is successful in its efforts at FERC to increase
871 its transmission rates. Again, the methodology used in this analysis is described in
872 further detail in Appendix B. Thus, Case #2 reflects the current distribution rate design,
873 adjusted to reflect Edison's FERC transmission filing and the rate base and revenue
874 requirements GCI has demonstrated to be reasonable.

875
876 The **third** new model run (referred to as Case #3) utilizes the same lower distribution
877 revenue level derived by GCI witness David Effron that are used in Case #2. However,
878 Case #3 uses the *current* transmission revenue levels rather than those sought by Edison
879 in the recent FERC filing based upon the assumption that FERC will heed the

Commission's advice and reject Edison's demand that FERC disregard past practice regarding depreciation of transmission assets.

Q. Have you developed analyses to illustrate the customer impact that each of these cases would have?

A. Yes. In a manner similar to that contained in our direct testimony, we have included Case #1, #2 and #3 to show the comparisons between the current cost components of the PPO as compared to those same PPO cost components in the three additional model runs described above. (See Appendix C, Case #1, #2, #3.) By examining the effects of the proposed delivery services and transmission rates on actual customer loads, the Commission can readily discern whether or not the lower CTCs resulting from these proposed rate increases have the ability to offset the increase in costs that delivery services customers will realize.

Q. Have you analyzed the impact that the three (3) case models would have upon NewEnergy's customer base?

A. Yes. Table 3 distinguishes between those customer accounts that will benefit from the changes from those customer accounts whose savings would diminish. Table 3 summarizes the same information that was presented in Table 6 of our direct testimony for the three customer impact models runs described above (Cases #1, #2, and #3). Table 3 is a summary of the results shown on Case #1, #2 and #3. It shows the number and percentage of AES NewEnergy customers that would be both adversely and positively affected by the criteria defined by these three cases. It also shows the percentage of sales volume these customer accounts represent and the relative annual cost impact on these customer accounts. Table 3 also tallies the average percentage increase

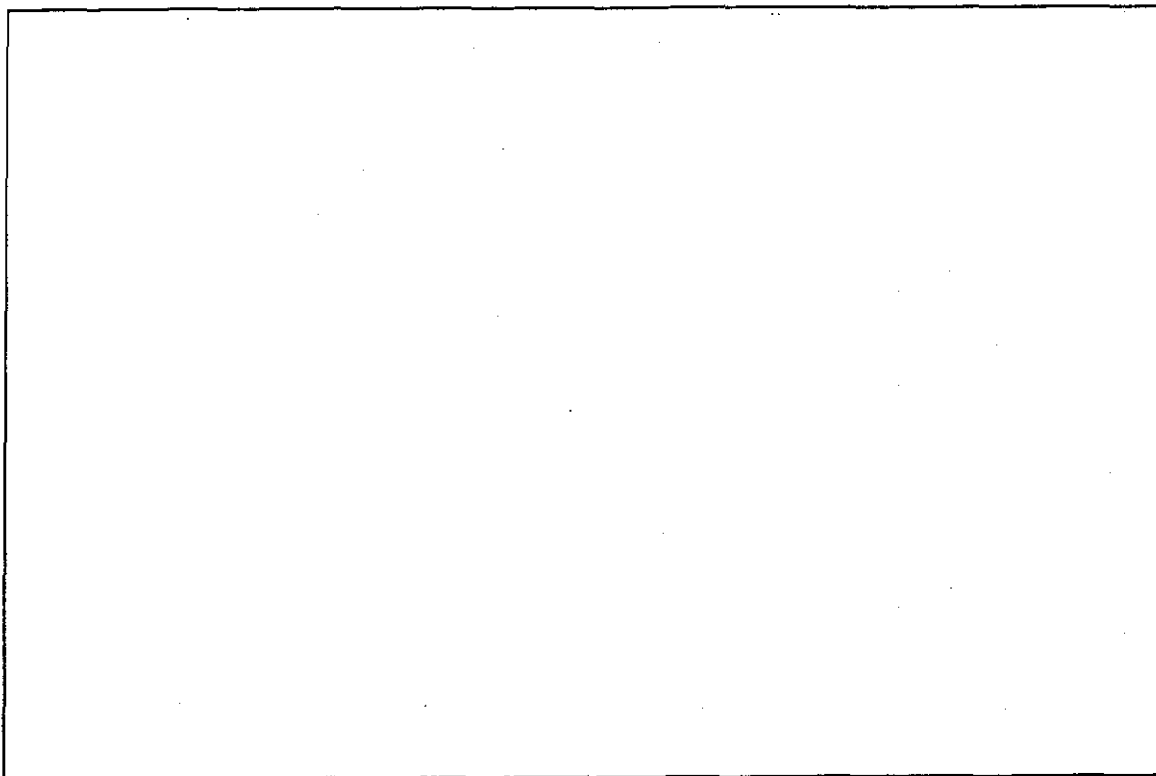
905 or decrease in savings resulting from the respective scenarios presented in each Case had
906 these accounts been served on the PPO. Finally, Table 3 quantifies the number and
907 percentage of customer accounts that would become served more economically under
908 bundled rates as a result of the criteria defined by these three cases. The specific
909 customer segments used and the methodology employed is identical to that described in
910 our previous testimony.

911
912 **Q. Have you developed charts to illustrate the customer impact that the three cases**
913 **would have?**

914 **A.** Yes. We have developed Charts A, B, C, D and E which respectively represent the same
915 customer impact comparisons for the three model runs described above (Cases #1, #2,
916 and #3). These five charts were produced using data from Table 3 in order to
917 demonstrate the relative differences between the three model runs presented in our
918 rebuttal testimony which measure the effect on AES NewEnergy's customer base as
919 representative of the competitive market in general. These five charts are similar to
920 Charts A, B, C, D and E that were presented in our direct testimony. After providing a
921 brief overview of each Chart, we will discuss how each of the three cases would impact
922 customers. (For the Commission's convenience, Charts A, B, C, D, and E are also
923 attached hereto and made a part hereof as Appendix C.)

924 Q. Please explain what Chart A illustrates.

925 A. Chart A shows how many AES NewEnergy customer accounts would be adversely
926 affected under each of the three Cases.



927

928

929 Q. Please describe Chart B.

930 A. Chart B illustrates the average percentage rate increase that those customer accounts
931 would realize under each Case. As you see, nearly half of the savings that the General
932 Assembly sought to pass through to customers to encourage competition via the 8%
933 mitigation factor would be eaten up by Edison's proposals.